Nos. 162-164

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 162

EAST TEXAS MOTOR FREIGHT LINES, INC. ET AL.,
APPELLANTS

v.

FROZEN FOOD EXPRESS ET AL.

No. 163

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FROZEN FOOD EXPRESS ET AL.

No. 164

AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, ET AL., APPELLANT

v.

FROZEN FOOD EXPRESS ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

REPLY BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

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We submit that the brief filed on behalf of the United States and the Department of Agriculture ignores controlling principles of statutory construction.

Section 203 (b) (6) of the Interstate Commerce Act exempts from motor carrier economic regulation "motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation * * *." Admittedly, if the key words "agricultural (including horticultural) commodities (not including manufactured products thereof)" had a clear and precise meaning as used in this context, there would be no occasion to resort to rules of construction or to legislative history to ascertain the Congressional purpose. However, the lower Federal courts in this and similar cases and the parties in this case have recognized that the scope of Section 203 (b) (6) cannot be determined merely by reading it. We contend that when it is read with the rest of Part II of the Interstate Commerce Act (motor carriers) it supports the Commission's interpretation of the exemption as not including fresh and frozen dressed poultry. We also contend that Congress has ratified the Commission's interpretation, since, with express knowledge that the Commission was treating fresh and frozen dressed poultry as non-exempt commodities, it amended Section 203 (b) (6) in other respects and left undisturbed the status of dressed poultry.

I. The Controlling Principles of Statutory Construction

The exemption in Section 203 (b) (6) for vehicles used in carrying agricultural commodities "(not including manufactured products thereof)" cannot be interpreted in a vacuum; its intended scope can be determined only by reading it as part of a carefully integrated statute for the regulation of interstate motor carriers. In *United States* v. *American Trucking Ass'ns.*, 310 U. S. 534, an early case interpreting other provisions of the Motor Carrier Act of 1935 (now Part II of the Interstate Commerce Act), this Court repeated and applied this principle in the following words (at pp. 542, 544):

> To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.
>
> * * * * *
>
> Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, "excepting as a different purpose is plainly shown."

This Court has already applied the same principles in construing the agricultural commodity exemption of Section 203 (b) (6). In *American Trucking Ass'ns* v. *United States*, 344 U. S. 298, the Court sustained the power of the Commission to issue rules governing the interchange and leasing of motor vehicles. Looking to the purpose of those rules, the Court noted (at p. 312) that—

> A fair analogy appears between the conditions which brought about the Motor Carrier Act and those sought to be corrected by the present rules, confirming our view of the Commission's jurisdiction. Then as now the industry was unstable economically, dominated by ease of competitive entry and a fluid rate picture. And as a result, it became overcrowded with small economic units which proved unable to satisfy even the most minimal standards of safety or financial responsibility.

Turning to the contention of the Secretary of Agriculture and others that the rules violated the exemption in Section 203 (b) (6) for vehicles carrying agricultural commodities, the Court pointed out (at p. 318) that—

> Regulated truckers must also receive protection upon their restricted routes and limited carriage. A balance between these competing factors, carried out in accordance with congressional purpose, does not seem to us unreasonable or invalid.

We think it is clear, therefore, that the exemption provision of Section 203 (b) (6) must be interpreted, like the rest of the Act, in the light of the overall purposes of Congress.

As the Motor Carrier Act was originally enacted in 1935, Section 202 (a) sets forth the following statement of Congressional policy:

> It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

As this Court summarized the pre-regulation situation, "the industry was unstable economically, dominated by ease of competitive entry and

a fluid rate picture." To cope with this problem, Congress established a system of common carrier certificates and contract carrier permits by which entry into interstate motor transportation was limited to the service required by the public convenience and necessity. Other provisions relating to rates and charges were designed to eliminate destructive pricing practices. It is obvious that to the extent that large segments of the trucking industry are exempted from such economic regulation, the broad Congressional purpose of providing stability for the industry may be thwarted. Thus, it is not enough to recognize that the exemption in Section 203 (b) (6) was intended to benefit farmers. Rather, the question is how far did Congress intend to go in carving out an exception from the general regulatory pattern. Stated otherwise, where did Congress strike a balance between a stabilized motor carrier industry and the interests of farmers?

The general principles of statutory construction just referred to must defer to any specific evidence of Congressional purpose as to the scope of Section 203 (b) (6). We concede that there is in the legislative history some evidence of legislative purpose which is inconsistent with any bare theory of strict construction of that subsection. We contend, however, that the Commission has given full effect to every indication of Congressional purpose.

As pointed out in the brief of the United States and the Department of Agriculture, Section 203 (b) (6) originated in an amendment to the original motor carrier bill (S. 1629) by the House Committee on Interstate and Foreign Commerce which added an exemption for "motor vehicles used exclusively in carrying livestock and unprocessed agricultural products." After it was pointed out in the House debate that pasteurized milk and ginned cotton might not be included in the exemption as thus phrased, an amendment was adopted to delete the words "unprocessed agricultural products" and to substitute "agricultural commodities not including manufactured products thereof."

In its *Determination of Exempted Agricultural Commodities,* 52 M. C. C. 511, the Commission reviewed this original legislative history, and concluded that—"It is thus apparent that the Congress intended the exemption to extend to commodities produced by the farmer in the natural state and to a limited extent those further treated or processed. In the absence of any declaration by Congress, as to what other commodities were to be embraced within the term, it is necessary to look to other sources." (Nos. 158–161, R. 38.) Also, in the *Determination* case, the Commission considered judicial and dictionary definitions of "agricultural" and "manufactured", together with extensive testimony as to

the various treatments and processes to which farm products are subjected. Finally, the Commission concluded that "the term 'agricultural commodities (not including manufactured products thereof)' as used in section 203 (b) (6) of the Interstate Commerce Act means: Products raised or produced on farms ~~by tillage and~~ cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment, have been so changed as to possess new forms, qualities, or properties, or result in combinations." (Nos. 158–161, R. 88–89.)

Applying this test to dressed poultry, the Commission concluded that the various processes by which live poultry becomes dressed poultry gave to poultry "new forms, qualities, or properties," in the same way that fresh meat resulting from the slaughter of livestock is no longer an agricultural commodity.

In the instant *Complaint* case, the Commission reiterated its view that fresh and frozen dressed poultry is not an exempted agricultural commodity under Section 203 (b) (6). In both the *Determination* and *Complaint* cases, the Commission had before it, and in the *Complaint* case relied upon various government publications which indicated that the dressing of poultry is gener-

ally regarded as a manufacturing activity, rather than an agricultural activity. These exhibits are generally summarized in our main brief at pages 39–41. We think it clear that where Congress has not fully defined such broad terms as "agricultural" and "manufactured", it is proper to consider the meaning of those words in business and governmental usage. However, it is contended in the brief of the United States and the Department of Agriculture (pp. 28–29) that "Since the proof does not show, nor did the Commission consider, the criteria employed in making these general classifications, the lists provide no guidance in determining the meaning of the word 'manufactured' as used by Congress in limiting the statutory exemption given to vehicles carrying agricultural commodtiies." However, during the hearing before the Commission in the *Determination* case, the Department of Agriculture introduced in evidence Exhibit 45, "Standard Industrial Classification Manual, Volume I, Manufacturing Industries", issued by the Executive Office of the President in 1945. This manual classifies as "manufacturing"—

> *Poultry and small game dressing and packing, wholesale*
>
> Establishments primarily engaged in killing, dressing, packing, and canning poultry, rabbits, and other small game for the trade. Important products of this in-

> dustry include dressed and packed poultry (chickens, turkeys, ducks, and geese); canned poultry (whole and parts); potted and deviled chicken; dressed rabbits and dressed hares.

In its brief before the Commission in the *Determination* case, the Department of Agriculture stated that "we do submit that the classifications made [in the Standard Industrial Classification Manual] are helpful guides in resolving the issues now before the Commission."[1] We submit that the Department cannot now object to the Commission's giving appropriate weight to materials of the type which the Department urged upon the Commission as "helpful guides".

II. Congress Has Ratified the Commission's Treatment of Dressed Poultry

The brief of the United States and the Department of Agriculture (pp. 16–17) emphasizes that since 1935 Congress has failed to act upon various proposals to narrow the agricultural commodity exemption of Section 203 (b) (6), and that one of these proposals was sponsored by the Commission. Indeed, this negative legislative history was relied upon heavily by the District Court in *I. C. C.* v. *Allen E. Kroblin, Inc.*, 113 F.

[1] The pertinent portion of the argument of the Department of Agriculture in its brief before the Commission is set forth in the Appendix to this brief.

Supp. 699 (N. D. Iowa),[2] in holding that dressed poultry was within the exemption of Section 203 (b) (6). As noted in our main brief, this Court recently has declared that "we will not draw the inference * * * that an agency admits that it is acting upon a wrong construction by seeking ratification from Congress." *Wong Yang Sung* v. *McGrath,* 339 U. S. 33, 47.

In any event, the most significant feature of the post-enactment history of this question in Congress is that Congress, with express knowledge that the Commission had interpreted the agricultural commodity exemption as not including dressed poultry, amended Section 203 (b) (6) in other respects but took no step to reverse the Commission's action with respect to dressed poultry.

As early as May 1949, the Commission (Division 5) had held publicly that dressed poultry was not an exempt agricultural commodity under Section 203 (b) (6). *Frank Battaglia Common Carrier Application,* 18 M. C. C. 167.[3] In 1950,

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[2] Affirmed, 212 F. 2d 555 (C. A. 8); certiorari denied, 348 U. S. 836.

[3] See also *Monark Egg Corp. Contract Carrier Application,* 26 M. C. C. 615 (1940); same case, second report, 44 M. C. C. 15 (1944); *Allen Common Carrier Application,* 28 M. C. C. 26 (1941); *McCarty Common Carrier Application,* 32 M. C. C. 615 (1942); *Determination of Exempted Agricultural Commodities,* 52 M. C. C. 511 (1951); *East Texas Motor Freight Lines* v. *Frozen Food Express,* 62 M. C. C. 646 (1954).

a subcommittee of the Senate Committee on Interstate and Foreign Commerce held extensive hearings pursuant to Senate Resolution 50, entitled *Study of Domestic Land and Water Transportation*. During the course of these hearings, counsel for the Refrigerated Carriers Association informed the Subcommittee (at p. 802) that—

> the Commission or its staff has held that the following commodities, among others, are "manufactured": *dressed poultry* (killed and picked), frozen fruits and vegetables, powdered and condensed milk, frozen egg mixtures, cheese, butter, canned fruits and vegetables, heated and bottled honey, shelled peanuts, cottonseed meal and hulls, clean rice, redried leaf tobacco, artificially dried fruits and vegetables, cottage cheese and cream cheese, rolled barley, ground or roasted coffee, cold-pack fruits, brined vegetables, and pasteurized milk. [Emphasis supplied.]

In 1952, during hearings before the full Senate Committee (also entitled *Domestic Land and Water Transportation*), a representative of the Department of Agriculture complained of the Commission's construction of Section 203 (b) (6) in the following terms (at p. 442):

> In this connection it is noted that the substitute bill would specifically add nursery stock to the list of exempt commodities. We think the Commission was unduly severe in its interpretation of section 203

> (b)(6) and that the exemption should properly be interpreted as covering such commodities as gladiolus bulbs, raw shelled peanuts, redried tobacco, *dressed poultry,* frozen milk, and other frozen foods. [Emphasis supplied.]

During the same 1952 hearings, the Commission brought to the attention of the Committee its decision in *Determination of Exempted Agricultural Commodities,* 52 M. C. C. 511.

It will be noted that the above-quoted statement of the Department of Agriculture refers to the fact that a substitute bill would add nursery stock to the commodities exempted by Section 203 (b) (6). This statement reflects the circumstance that the Commission had held that nursery stock was not an exempted agricultural commodity under Section 203 (b) (6), and that the Committee was specifically informed of the Commission's holding. (1952 Hearings, pp. 422, 426–431.)

Thus, it is clear that as a result of the 1950 and 1952 hearings, Congress was specifically informed that the Commission had interpreted the exemption in Section 203 (b) (6) as not including dressed poultry or nursery stock. With this knowledge, Congress in 1952 amended Section 203 (b) (6) to insert after the word "agricultural" the words "(including horticultural)." The specific purpose of this amendment was to overrule or reverse the Commission's view that

nursery stock was not an exempt commodity under Section 203 (b) (6). (House Rep. 2175, 82d Cong., 2d Sess.). But with equally specific knowledge that the Commission had held that dressed poultry was not exempt under Section 203 (b) (6), Congress took no action to reverse that holding of the Commission.

In brief, Congress, with knowledge of the issue, declined to avail itself of a convenient opportunity to override the Commission's view that dressed poultry was not an exempted agricultural commodity. This is highly persuasive evidence that the Commission has correctly interpreted the will of Congress. *United States* v. *American Trucking Associations,* 310 U. S. 534, 549–550; *Costanzo* v. *Tillinghast,* 287 U. S. 341, 345. Stated otherwise, Congress has already rejected the contentions of the United States and the Department of Agriculture with respect to dressed poultry.

Respectfully submitted,

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APPENDIX

The brief of the Secretary of Agriculture which was filed with the Commission in Docket No. MC–C–968, *Determination of Exempted Agricultural Commodities*, contains the following at pages 165–166:

5. Agricultural Commodities as Distinguished From Manufactured Products in the Standard Industrial Classification Manual

In order that the Commission might have the benefit of a classification of manufacturing and nonmanufacturing industries adopted by various agencies of the Federal Government, the Department of Agriculture presented Exhibits C–45 and C–46, through Witness Leavens. These exhibits consisting of the two volumes of the Standard Industrial Classification Manual, are official publications of the Bureau of the Budget in the compilation of which the Treasury Department, Social Security Board, Tariff Commission, Securities and Exchange Commission, Bureau of Labor Statistics, Bureau of the Census, Bureau of Foreign and Domestic Commerce, Bureau of Internal Revenue, Federal Reserve System, Bureau of Agricultural Economics, and the Interstate Commerce Commission participated. The classifications are intended as an aid in securing uniformity in the presentation of statistical data collected by various agencies of the Federal

Government, State agencies, trade associations, and private research agencies and are used by private research agencies and numerous of the above-mentioned Federal agencies, including the Interstate Commerce Commission.

Manufacturing establishments, as defined in the classifications, are:

> Those establishments engaged in the mechanical or chemical transformation of inorganic or organic substances into new products and usually described as plants, factories, or mills, which characteristically use power-driven machines and materials-handling equipment. Establishments engaged in assemblying component parts of manufactured products are also considered manufacturing if the new product is neither a structure nor other fixed improvement.

All other establishments are listed as nonmanufacturing establishments. The following statement appears with respect to the status of so-called wholesale and retail trades engaged in the preparation and marketing of agricultural commodities:

> Establishments engaged in the following types of operation are not included in the manufacturing division: Assembling, grading, and preparing fruits and vegetables for the market; pasteurizing and bottling milk; shelling and roasting nuts; cleaning, shucking, and packing fresh clams, oysters, and similar sea foods. Retail stores producing some or all of the products sold on the premises are not included in the manufacturing division.

While we do not contend that the classifications made in the Standard Industrial Classification Manual are necessarily binding upon the Commission in the present proceeding, we do submit that the classifications made therein are helpful guides in resolving the issues now before the Commission. The Manual was designed for the purpose of achieving substantial uniformity within the Federal agencies and is widely used by them.

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